



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MEMORANDUM

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SUBJECT: Draft Final Audit Report – Arizona Republican Party
(LRA 889)

I. INTRODUCTION

The Office of the General Counsel has reviewed the Draft Final Audit Report (“DFAR”) on the Arizona Republican Party (“ARP” or “Committee”). Our comments in this memorandum focus on Finding 1 (Misstatement of Financial Activity) and Finding 2 (Excessive Coordinated Party Expenditures). We concur with any findings not specifically discussed in this memorandum. If you have any questions, please contact Joshua Blume, the attorney assigned to this audit.¹

¹ The Office of General Counsel recommends that the Commission consider this document in open session because the DFAR does not include matters exempt from public disclosure. 11 C.F.R. § 2.4(a).

II. MISSTATEMENT OF FINANCIAL ACTIVITY (Finding 1)

The Committee's third party vendor, which processed employee salaries, taxes and health benefits, withdrew funds from the Committee's federal account to pay federal payroll, allocable payroll, and purely non-federal payroll, as well as related benefits. With respect to the non-allocable non-federal payroll paid from the federal account, the Committee reimbursed the federal account for these payments with funds from its non-federal account.

The Committee did not report either the disbursements from the federal account for the payment of non-federal payroll or the transfers from the non-federal account to the federal account. The DFAR concludes that both the disbursements from the federal account for non-federal payroll and the reimbursements to the federal account from the non-federal account for these disbursements should have been reported, and we agree with this conclusion. 2 U.S.C. § 434(b)(2)(J), (4)(C), (H)(v); 11 C.F.R. § 104.3(a)(2)(v), (viii), (b)(1)(ix).

It should be noted that federal accounts may only accept funds that comply with the limitations and prohibitions of the Act.² 11 C.F.R. § 102.5(a)(1)(i). Also, while there are enumerated exceptions, federal accounts may not accept transfers from any other account or accounts maintained for the purpose of financing activity in connection with non-federal elections. *Id.* Given those prohibitions, we recommend that the Audit Division revise the DFAR to include a citation to 11 C.F.R. § 102.5(a)(1)(i).

III. EXCESSIVE COORDINATED EXPENDITURES (Finding 2)

A. Background

The ARP reported making coordinated expenditures for mailings on behalf of three candidates for the U.S. House of Representatives in Arizona in October and November 2010. It reported expenditures totaling \$ 209,031.50 on behalf of candidate David Schweikert, \$57,372.53 on behalf of candidate Paul Anthony Gosar, and

² The Audit Division also advised the ARP to report transfers of credit card contributions intended for the ARP's non-federal account that are first deposited in the federal account and then transferred to the non-federal account. In Advisory Opinion 2001-17 (DNC Services), the Commission advised the DNC that it may process contributions intended to be split between the DNC's federal and non-federal accounts in a similar manner, but the DNC had represented that it would deposit contributions clearly intended to be non-federal directly into a non-federal account. In this case, the ARP deposited two types of contributions in its federal account: 1) contributions intended to be split between its federal and non-federal accounts and 2) contributions intended solely for the non-federal account. We believe that the contributions intended to be split fall within the ambit of AO 2001-17 because these similar types of contributions were the subject of the Commission's decision in AO 2001-17. We question, however, whether AO 2001-17 covers those contributions that were solely intended for the non-federal account. We are not recommending that the Audit Division take any action based on our understanding that the number of contributions solely intended to be non-federal that the ARP may have processed through its federal account is very small.

\$262,956.70 on behalf of candidate Jesse Kelly. Each of these reported expenditures exceeded the 2010 coordinated party expenditure limit for the 2010 U.S. House of Representatives election in Arizona, which was \$43,500.³

In response to the Interim Audit Report (“IAR”), the Committee argues that the above disbursements should not be counted towards its coordinated party expenditure limit because the disbursements qualify for the volunteer materials exemption and were not properly disclosed on its reports. *See* 2 U.S.C. §§431(8)(B)(ix) and (9)(B)(viii); 11 C.F.R. §§ 100.87 and 100.147.

This finding and the Committee’s response to the IAR present the issue of whether the ARP describes sufficient involvement of its volunteers in the mailings so as to qualify them for the volunteer materials exemption. Connected with this issue is also the question of what constitutes adequate documentation or evidence of volunteer involvement.

B. Levels of Volunteer Involvement and Documentation Needed to Qualify for the Volunteer Materials Exemption.

The DFAR concludes that the ARP’s description of the activities its volunteers performed in connection with the mailings demonstrates sufficient volunteer involvement to qualify the mailings for the volunteer materials exemption. Specifically, the DFAR concludes that ARP failed to disclose volunteer exempt activity spending in the amounts cited above on behalf of each candidate that the Committee previously reported as coordinated party expenditures. The DFAR thus implicitly concludes that ARP’s disbursements for the mailings should not be counted towards its coordinated party expenditure limit.

Because of the uncertainty regarding the level of volunteer involvement needed to qualify State or local party disbursements for the exemption, we do not think there is a sufficient basis to conclude that the exemption does or does not apply. Rather, we recommend that the Audit Division note this issue in the cover memorandum that forwards the report to the Commission and revise the report to indicate that there is a lack

³ *See* 2 U.S.C. § 441a(d)(1), (3) and 11 C.F.R. § 109.32(b); *see also* Notice of Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 75 Fed. Reg. 8353, 8354 (Feb. 24, 2010). The actual limit that applied to the Committee in the 2010 election is unclear because although the Committee reported both receiving assignments of coordinated party expenditure spending authority from national committees and assigning some part of its own spending authority to one of those national committees, the amounts are unknown and there is no extant documentation of the assignments. Without documentation to support an increased coordinated spending limit, the ARP’s coordinated spending limit for each congressional candidate was \$43,500. *See* 11 C.F.R. §§ 109.33(a) (assignment must be in writing, must state amount of authority assigned, and must be received by assignee before any coordinated party expenditure made based on assignment), (c) (requiring party committees assigning or being assigned coordinated expenditure authority to maintain written records of the assignments for at least three years).

of clarity regarding the application of the exemption, and, in light of that lack of clarity, the disbursements are not being attributed to the ARP's coordinated expenditure limit.

In its response to the IAR, the Committee states that both a commercial printing firm and volunteers were involved in the mailings. *See* Response of ARP to IAR, dated January 18, 2013. The firm printed the mail pieces and also imprinted a graphic design supplied by the Committee; printed the bulk-rate mail indicia on the mail pieces; addressed each piece; and sorted the mail pieces by zip code. The volunteers bound finished groups of mail pieces; placed them in U.S. Postal Service bags and trays; and delivered the sorted mail pieces to a U.S. Postal Service facility. *Id.*

The Committee submitted photographs of volunteers performing the above tasks with respect to the mailings on behalf of candidate Schweikert. *See* DFAR on the Arizona Republican Party, at 10 n.9. The Committee represents that it did not have documentation in support of its assertions about the mailings on behalf of candidates Gosar and Kelly because, during a transitional period to new leadership and staffing in January 2011, records of prior campaign activities were discarded. The ARP has apparently attempted to obtain documents or information from the candidates' committees but without success. It also has attempted to obtain affidavits without success.

Recently, the Commission addressed the applicability of the volunteer materials exemption in the Final Audit Reports in the Democratic Executive Committee of Florida (DECF) and the Tennessee Republican Party Federal Election Account. In the DECF FAR, the Commission concluded that there existed a "lack of clarity in recent audits regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption," and the Audit staff did not count the expenses toward the coordinated party expenditures. *See* Final Audit Report of the Commission on the DECF (2012), at 3. In that matter, the DECF had provided a cell phone picture that had been taken by an individual who had averred by e-mail that he was present at the mailings of the mail pieces. *See* OGC Comments on DFAR on the DECF at 3. Similarly, in the earlier Tennessee Republican Party FAR, the Commission noted the "lack of clarity" regarding application of the exemption, and did not approve a finding that certain mail pieces did not qualify for the volunteer material exemption. *See* Final Audit Report of the Commission on the Tennessee Republican Party Federal Election Account (2011), at 3. Our recommended approach here is consistent with the Commission's conclusions in both of these FARs.

As noted in our comments on the DFARs in these prior audits, the Commission has failed to reach consensus in past enforcement matters regarding the application of the volunteer materials exemption under similar facts. *See* OGC Comments on Final Audit Report on Tennessee Republican Party Federal Election Account (LRA 745); OGC Comments on DFAR on the DECF (LRA 805); *see also* OGC Comments on Final Audit Report on the Washington State Democratic Central Committee (LRA 737). In particular, we noted MUR 5598, Utah Republican Party, *et al.*, in which four

Commissioners issued a Statement of Reasons declining to draw a conclusion regarding whether the URP met the exemption in that case because of the “complicated history” of the exemption’s application, and therefore dismissing the complaint as an exercise of prosecutorial discretion. *See* OGC Comments on Final Audit Report on the Tennessee Republican Party Federal Election Account (LRA 745); OGC Comments on Final Audit Report on the Washington State Democratic Central Committee (LRA 737) (discussing Statement of Reasons of Commissioners Petersen, Bauerly, Hunter, and Weintraub in MUR 5598, Utah Republican Party, et al. (April 9, 2009)).

Recognizing the lack of clarity as to the volunteer materials exemption, the Commission has attempted, without success so far, to formulate a consensus policy regarding what constitutes “substantial volunteer involvement” for the purpose of applying the exemption. In particular, the Commission issued four draft documents for public comment in March 2010. *See* Proposed Interim Enforcement Policy, Agenda Document No. 10-16, Drafts A through D. While there appears to be broad agreement among the draft documents about some types of activities that would qualify a State or local committee for the volunteer materials exemption, there is disagreement among the drafts about whether any one of the potentially qualifying activities would, by itself, suffice to qualify the committee for the exemption, or whether only a number of activities taken together might suffice. *Compare, e.g.* Proposed Interim Enforcement Policy, *supra*, Draft A (Chairman Matthew S. Petersen, Commissioner Caroline C. Hunter, and Commissioner Donald F. McGahn II) at 5, Draft B (Commissioner Steven T. Walther) at 5, Draft C (Vice Chair Cynthia L. Bauerly, and Commissioner Ellen L. Weintraub) at 5, and Draft D (Commissioner Donald F. McGahn II) at 4.

In this matter, the ARP apparently submitted photographs documenting volunteers participating in activities relating to the mailings on behalf of candidate Schweikert. We understand that the ARP did not submit any affidavits or sworn declarations from individuals with direct knowledge of the mailings on behalf of Schweikert. Nevertheless, based on our conclusion regarding the Commission’s lack of consensus on the level of volunteer involvement needed to qualify a party committee for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, we recommend that the Audit Division raise this issue in the cover memorandum to the Commission and indicate in its audit report that because of this lack of clarity, it is not attributing the ARP’s spending on the Schweikert mailings to the ARP’s coordinated expenditure limit.

The ARP was unable to provide any documentation to support its assertions of volunteer exempt activity with respect to the mailings on behalf of candidates Gosar and Kelly. While a question exists regarding whether disbursements of a State or local committee may qualify for the exemption absent any documentation of the nature and extent of volunteer involvement apart from the committee’s assertions, we recommend nevertheless that the Audit Division raise this issue in the cover memorandum to the Commission and indicate in the audit report that, because of the lack of clarity regarding

the application of the exemption, the disbursements on the Gosar and Kelly meetings are also not being attributed to the ARP's coordinated expenditure limit.⁴

⁴ This recommendation is consistent with our recommendation in comments we conveyed to the Audit Division in another matter, in which the State committee was unable to provide documentation to support its assertion of sufficient volunteer involvement to satisfy the exemption with respect to certain disbursements for mailings. See OGC Comments on Final Audit Report on the Washington State Democratic Central Committee ("WSDCC") (LRA 737), at 2-3. The Final Audit Report in that matter, issued in March 2011, noted this absence of documentation, as well as the fact that WSDCC expressed its belief that the mailings were intended as volunteer exempt activities and were reported as such. See Final Audit Report on WSDCC (2011), at 3-4. In light of the lack of clarity with respect to the amount of volunteer involvement needed to qualify for the volunteer materials exemption and the expiration of the statute of limitations, the Commission did not approve the Audit staff's finding by the required four votes. *Id.*